



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9467-01-R2]

Notice of Availability of Draft NPDES General Permit for Small Municipal Separate Storm Sewer Systems in the Commonwealth of Puerto Rico and Federal Facilities within the Commonwealth of Puerto Rico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft NPDES general permit.

SUMMARY: The Director of the Caribbean Environmental Protection Division (CEPD), Environmental Protection Agency—Region 2 (EPA), is issuing this Notice of a Draft National Pollutant Discharge Elimination System (NPDES) general permit, PRR040000/PRR04000F, for discharges from small municipal separate storm sewer systems (small MS4s) from urbanized areas within the Commonwealth of Puerto Rico to waters of the United States. This draft NPDES general permit establishes Notice of Intent (NOI) requirements, standards, prohibitions and management practices for discharges of stormwater from small MS4 urbanized areas. A prior Notice of Availability of a draft general permit was issued by EPA on June 11, 2014. EPA has substantially modified the draft general permit and is issuing a new draft general permit.

DATES: Public comments must be received on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Within the comment period, interested persons may request a public hearing, pursuant to 40 CFR part 124, concerning the proposed draft permit. Requests for a public hearing must be sent or delivered in writing to the same address, as provided below, for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR part 124, EPA shall hold a public hearing if it finds, on the basis of the requests, a significant degree of public interest on the proposed draft permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing.

ADDRESSES: Submit your comments by one of the following methods:

1. Mail: Multimedia Permits and Compliance Branch, U.S. EPA Region 2, City View Plaza II, Suite 7000, 48 Road 165 Km 1.2, Guaynabo, Puerto Rico 00968–8069.
2. Email: Bosques.Sergio@epa.gov.

The draft permit is based on an administrative record available for public review at EPA, Region 2, Caribbean Environmental Protection Division, City View Plaza II, Suite 7000, 48 Road 165 Km 1.2, Guaynabo, Puerto Rico 00968–8069. A reasonable fee may be charged for copying requests. However, the draft general permit and fact sheet are available at EPA’s website: <https://www.epa.gov/npdes-permits/npdes-permits-phase-2-stormwater-program-puerto-rico>.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday excluding holidays from: Sergio Bosques, Caribbean Environmental Protection Division, U.S. EPA, Region 2, City View Plaza II, Suite 7000, 48 Road 165 Km 1.2, Guaynabo, Puerto Rico 00968–8069; telephones: 787-977-5838 or 787-977-5870; or by e-mail: Bosques.Sergio@epa.gov. EPA encourages virtual communication as access to the office is limited at this time.

SUPPLEMENTARY INFORMATION: EPA is proposing to issue the draft NPDES general permit for the discharge of stormwater from small MS4s to waters within the Commonwealth of Puerto Rico. The permit describes three distinct small MS4s, which include the conventional cities and towns; Non-Conventional state, federal and other publicly-owned systems; and Non-Conventional transportation systems.

The conditions in the draft permit are established pursuant to Clean Water Act (CWA) Section 402(p)(3)(B)(iii) to ensure that pollutant discharges from small MS4s are reduced to the maximum extent practicable (MEP), protect water quality, and satisfy the appropriate water

quality requirements of the CWA. The term small municipal separate storm sewer system is available in 40 CFR 122.26(b). In addition, this term also includes systems similar to separate storm sewer systems and flood management conveyances in municipalities such as military bases, large hospital or prison complexes, highways, flood control pump stations, and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings. For example, an armory located in an urbanized area would not be considered a regulated small MS4.

The draft general permit sets forth the requirements for the small MS4 to “reduce the discharge of pollutants to the maximum extent practicable, including management practices, control techniques, and system, design and engineering methods.” (See CWA section 402(p)(3)(B)(iii)). MEP is the statutory standard that establishes the level of pollutant reductions that MS4 operators must achieve. EPA believes that the implementation of best management practices (BMPs), designed to control storm water runoff from the MS4, is, generally, the most appropriate approach for reducing pollutants to satisfy the MEP standard. Pursuant to 40 CFR. 122.44(k), the draft permit contains BMPs, including development and implementation of a comprehensive stormwater management program (SWMP), as the mechanism to achieve the required pollutant reductions.

Section 402(p)(3)(B)(iii) of the CWA also authorizes EPA to include in an MS4 permit “such other provisions as [EPA] ... determines appropriate for control of ... pollutants.” This provision forms a basis for imposing water quality-based effluent limitations (WQBELs), consistent with the authority in Section 301(b)(1)(C) of the CWA. See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166–67 (9th Cir. 1999); 64 FR. 68722, 68753, 68788 (Dec. 8, 1999). Accordingly, the draft permit contains the WQBELs, expressed in terms of BMPs, which EPA has determined are necessary and appropriate under the CWA. EPA issued a final general permit to address stormwater discharges from small MS4s on June 13, 2016. The 2016 general permit required

small MS4s to develop and implement a SWMP designed to control pollutants to the maximum extent practicable and protect water quality. This draft permit continues to build on the requirements of the 2016 general permit.

EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions of the MS4, and BMP effectiveness. Compliance with the requirements of this general permit will meet the MEP standard. The iterative process of MEP consists of a municipality developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of the BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. The changes contained in the draft general permit reflect the iterative process of MEP. Accordingly, the draft general permit contains similar tasks and details of the 2016 general permit.

EPA has provided, in the draft general permit fact sheet, a summary of the permit conditions.

The draft general permit and fact sheet are available at EPA's website:

<https://www.epa.gov/npdes-permits/npdes-permits-phase-2-stormwater-program-puerto-rico>.

Other Legal Requirements

A. Endangered Species Act (ESA)

The provisions related to the ESA have been continued from those in the 2016 general permit.

EPA will be requesting concurrence from the appropriate Federal services (U.S. Fish and Wildlife Service and National Marine Fisheries Service) in connection with the 2021 draft and has renewed this request for the proposed draft general permit.

B. Executive Order 12866

EPA has determined that this draft general permit is not a “significant regulatory action” under the terms of Executive Order 12866 and is therefore not subject to the Office of Management and Budget (OMB) review.

C. Paperwork Reduction Act

The information collection requirements of this permit were previously approved by OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2040–0004.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. However, general NPDES permits are not “rules” subject to the requirements of 5 U.S.C. 553(b), and are therefore not subject to the RFA.

E. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires federal agencies to assess the effects of their “regulatory actions” (defined to be the same as “rules” subject to the RFA) on tribal, state and local governments and the private sector. However, general NPDES permits are not “rules” subject to the requirements of 5 U.S.C. 553(b) and, are, therefore, not subject to the RFA or the UMRA.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Carmen R. Guerrero-Pérez,

Director,

Caribbean Environmental Protection Division.

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